GNAPs' discretion, and that it should be permitted to substitute an umbrella excess liability policy for the minimum limits (GNAPs Petition ¶ 67).

Additionally, Verizon's proposal requires GNAPs to reimburse Verizon for the cost of insurance if GNAPs' contractors' do not maintain insurance. but GNAPs proposes to make this obligation reciprocal (GNAPs Brief at 61). Finally, GNAPs proposes to delete Verizon's requirement that all real and personal property located on Verizon's premises be insured on a full replacement cost basis (id.).

2. Positions of the Parties

a. GNAPs

GNAPs argues that Verizon's proposal is burdensome. First, GNAPs notes that PacBell, a similarly situated ILEC. considered GNAPs' current commercial general liability insurance coverage of $1 million with $10 million in excess liability coverage sufficient: therefore, GNAPs questions why Verizon does not find its proposal acceptable (GNAPs Brief at 62-63), Additionally, given that SBC has agreed to lower insurance levels, GNAPs contends that Verizon is obligated to provide just cause why its insurance requirements are reasonable, a burden that Global alleges Verizon fails (GNAPs Reply at **24).** Second, GNAPs states Verizon has not indicated any circumstance which has resulted in damages or injuries in excess of this amount committed by any CLEC, and insists that its current insurance coverage is adequate to cover any damages that may occur from GNAPs' operation (Exh. GNAPs-2, at 6: GNAPs Brief at 63). Indeed, says GNAPs, because GNAPs and Verizon interconnect at end point fiber meets, there is little risk of destruction to Verizon property and facilities (GNAPs Reply at

25). Third, GNAPs claims that Verizon's proposed automobile insurance requirement duplicates existing state requirements and is excessive, and, therefore, should be deleted (Exh. GNAPs-2, at 6; GNAPs Petition ¶ 66). Fourth, GNAPs argues that limits imposed on other CLECs in other proceedings before the Department should serve as a cap (Exh. GNAPs-2, at 7). Finally, GNAPs believes the precise form of insurance should be left to GNAPs discretion, and that it should be permitted to substitute an umbrella excess liability policy for the minimum limits (GNAPs Petition ¶ 67).

GNAPs also asserts that Verizon's requirements are discriminatory because Verizon self-insures and is, therefore, imposing costs where it has none in order to make GNAPs non-competitive (Exh. GNAPs-2, at 8-9; GNAPs Brief at 63; GNAPs Reply at 25). GNAPs admits that Verizon has not excluded the possibility that GNAPs can self-insure, but GNAPs maintains that Verizon has not provided the criteria to do so, which, GNAPs alleges, is indicative of the one-sided negotiations in which a monopoly with leverage engages (GNAPs Brief at **63).**

GNAPs contends that § 21 of the General Terms and Conditions are related to Arbitration Issue No. 8 (GNAPs Petition ¶ 67).[40]

b. Verizon

Verizon argues that its proposed insurance requirements are reasonable and necessary

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40 The Department notes that in Exh. GNAPs-2, the Direct Testimony of William J. Rooney, General Counsel for GNAPs, Mr. Rooney misstates Verizon's insurance requirements at issue in this proceeding and also incorrectly identifies the proper contract section (see Exh. GNAPs-2, at 5). GNAPs does properly identify on brief the specific contract language in dispute.

for the protection of its network, personnel, and other assets in the event GNAPs has insufficient resources (Verizon Brief at 96). In support, Verizon notes that its proposal is consistent with what Verizon requires of other carriers (id. at 96-97). Additionally, Verizon states that the interconnection agreement resulting from this proceeding will permit GNAPs to collocate at Verizon's facilities, and that collocation increases Verizon's risk and exposure to loss in many ways, including: (1) the risk of injury to employees: (2) possible damage to or loss of facilities; (3) the risk of fire or theft; (4) the risk of security breaches; and (5) possible interference with or failure of the network (id. at 99). Furthermore, Verizon asserts that because its risk is much greater than GNAPs' risk, it is appropriate for the agreement to reflect this asymmetrical risk (Exh. VZ-4, at 10; Verizon Brief at 103)

Moreover, Verizon asserts that the Parties operate in a volatile industry and in a society in which either party could be held liable for the acts of the other: accordingly, says Verizon, it maintains an extensive insurance program that protects both Parties (Verizon Brief at 99). On the other hand, Verizon states that GNAPs' proposed limits of $1 million are inadequate, noting that damage or injury to Verizon's network, assets or employees could easily exceed the limits of GNAPs' proposed coverage (Exh. VZ-4. at 8: Verizon Brief at 99).

Verizon further contends that automobile liability insurance and excess liability coverage should be provided to assure that GNAPs vehicles, or GNAPs' employees' vehicles, used in proximity to Verizon's network are adequately insured (Verizon Brief at 100). Verizon also maintains that GNAPs' proposal to make the insurance requirements provision a mutual obligation makes no sense because: (1) Verizon maintains a financially sound insurance

program: (2) the risks are increased primarily for Verizon; and (3) for certain provisions, such as the additional insured provisions. it would counteract the benefits to have both Parties name the other as additional insureds (Exh. VZ-4, at 9-10; Verizon Brief at 100). **As** to GNAPs' contention that Verizon gains a competitive advantage because it self-insures, Verizon dismisses this claim as unfounded, noting Verizon's extensive insurance program (Verizon Brief at 103). Finally, Verizon cites to FCC decisions, as well as other state arbitration orders, in support of its proposed insurance requirements (Verizon Brief at 97, 102-103). Verizon notes that the aggregate amount of insurance it seeks from GNAPs falls below the FCC's measure of reasonableness (Verizon Brief at 97, citing Special Access Expanded Interconnection Order[41]). Accordingly, Verizon contends its proposed insurance requirements are reasonable and urges the Department to adopt its proposal.

3. Analysis and Findings

Two of Verizon's proposed insurance requirements are consistent with that which the Department has approved in Tariff No. 17, namely. the limits for Commercial General Liability and Worker's Compensation Insurance. Because the insurance requirements in Tariff No. 17 were approved by the Department, we find that Tariff No. 17 serves as an appropriate benchmark for insurance limits. Because Verizon's proposed limits for Commercial General Liability and Worker's Compensation Insurance are identical to the limits in Tariff No. 17 for

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41 In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, CC Docket No. 93-162, Second Report and Order, FCC No. 97-208, (rel. June 13, 1997) ("Special Access Expanded Interconnection Order").

these two types of insurance, we find Verizon's proposal reasonable and hereby approve §§ 21.1.1 and 21.1.4 of the General Terms and Conditions.

As to the requirements that are different from Tariff No. 17, we find as follows. First, the umbrella/excess liability coverage of $5 million in Tariff No. 17 has been increased to $10 million. We do not dispute that the exposure and risk present with interconnection and access to network elements as a result of today's environment may have increased (Exh. VZ-4. at 6: Exh. DTE-VZ 1-1). Nor do we dispute Verizon's claim that the cost to secure the $10 million coverage is minimal (see Exh. VZ-4, at 13).[42] But, Verizon has not persuaded us to conclude that the limit should be twice that which the Department approved in Tariff No. 17. Verizon's interconnection tariff only requires CLECs obtain $5 million in umbrella/excess liability coverage, and Verizon has not proposed any modifications to increase the umbrelldexcess liability coverage limit in Tariff No. 17. Thus, we conclude that $5 million in excess/umbrella liability coverage is adequate, even in today's environment, and we reject Verizon's proposed limit of $10 million. Likewise, GNAPs has not provided any persuasive argument that the limit should be reduced to one fifth of the Department-approved limit of $5 million. Accordingly, we direct the Parties to include a $5 million limit for excess umbrella liability coverage in § 21.1.3 of the General Terms and Conditions.

The second substantive difference between Verizon's proposal and Tariff No. 17 is that

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42 GNAPs failed to respond to the Department's record request, RR-DTE- 8, for information as to the cost to secure the $10 million insurance limit (see Tr. at 191). The Department therefore imputes a negative inference and concludes that the incremental cost to purchase this insurance is minimal, as Verizon contended.

Verizon seeks to require GNAPs to maintain Commercial Motor Vehicle Liability insurance of $2 million, whereas Tariff No. 17 does not contain any specific provision for this. We note that the FCC has found that "it is not unreasonable for LECs to require interconnectors to carry a reasonable amount of automobile insurance, provided that interconnector-employees are permitted to park their vehicles on LEC property." Special Access Expanded Interconnection Order at ¶ 345. We conclude similarly and find Verizon's proposal for a separate requirement is consistent with requirements in Tariff No. 17. We further conclude that a separate requirement for vehicle liability insurance is reasonable, given the variety of types of vehicles and equipment used on Verizon's property (Exh. DTE-VZ 1-1). Furthermore, because Verizon's proposed $2 million limit for automobile insurance is consistent with the limits for the other required forms of insurance, we find the limit amount reasonable. Accordingly, we approve Verizon's proposed § 21.2 of the General Terms and Conditions. Even though the interconnection agreement at hand requires insurance at levels above and in addition to that which is required pursuant to Tariff No. 17, the aggregate level of insurance of $18 million required by Verizon under the agreement, is still below the FCC's measure of reasonableness, which, the FCC stated, was one standard deviation above the industry average, or $21.15 million. See Special Access Expanded Interconnection Order at ¶¶ 346, 348.

As to the form of insurance proposed by Verizon, we find Verizon's proposal to be reasonable. GNAPs has provided no record evidence to support its position that it should be permitted to substitute an excess umbrella policy for the minimum limits for the different types of insurance coverage. Moreover, we agree with Verizon that "[i]t is unfair to put Verizon in

a position to potentially be responsible for claims due to loss of GNAPs' real and personal property and that of its employees" (Exh. VZ-4, at 7). Therefore, we approve the language in Verizon's proposed § 21.1.5 of the General Terms and Conditions.

Additionally, given that the risk of collocation falls more heavily on Verizon and, further, given that Verizon maintains an extensive insurance program, we find little merit to GNAPs claim of competitive disadvantage. Likewise, we reject GNAPs' proposal for symmetry in the "additional insured" provision because such symmetry would be inconsistent with the function of this provision, i.e., to designate one insurance company to provide the lead defense (Exh. VZ-4, at 9: Verizon Response ¶ 205). As Verizon points out, the "additional insured" provision avoids insurance company "finger pointing" (Exh. VZ-4, at 9). Accordingly, we approve Verizon's proposed § 21.6 of the General Terms and Conditions. Regarding GNAPs' claim that Verizon has not provided the criteria for self-insurance, we note that GNAPs did not raise this claim in its Petition, or during the arbitration hearing. Accordingly, we have no record evidence upon which to reach the merits of this allegation.

In sum, we find GNAPs has failed to persuade us that its proposal is the more appropriate. Accordingly, the Department adopts Verizon's proposed § 21 of the General Terms and Conditions of the agreement, with the modifications noted above.

H. Should the Interconnection Agreement Include Language That Allows Verizon to Audit GNAPs' "books, records, documents, facilities and systems"? (Arbitration Issue No. 9)

1. Introduction

Verizon seeks to include a bilateral right to audit the other parties' books to ensure

billing accuracy. GNAPs argues that the *proposed* audit rights provide Verizon with unreasonably broad access to competitively sensitive records.

2. Positions of the Parties

a. GNAPs

GNAPs argues it is unreasonable for Verizon to be privy to its competitors' books and records because they contain competitively sensitive materials which would be costly to sanitize (Exh. GNAPs-2, at 10; GNAPs Brief at 65). GNAPs further contends that Verizon already keeps computer records of call traffic exchanged between the Parties, and that the Parties already have in place a practice of verifying records on a monthly basis (Exh. GNAPs-2, at 10; GNAPs Brief at 65). Additionally, GNAPs states that Verizon pays GNAPs based on Verizon's count of minutes-of-use ("MOUs"), and that billing disputes involve GNAPs disputing Verizon's MOU count (GNAPs Reply at 26). Thus, GNAPs insists that Verizon does not need to audit GNAPs' information to verify traffic for billing (id.). GNAPs, however, states that it is amendable to providing traffic reports and Call Data Records ("CDRs") necessary to verify billing, stating that with CDRs available, there is no legitimate basis to insist on access to GNAPs' books and records (GNAPs Brief at 65). Finally, GNAPs asserts that Verizon's proof of allegations about an illegal billing scheme by GNAPs is nothing more than unproven allegations in a complaint it filed against GNAPs (GNAPs Reply at 26).

GNAPs states that § 7 of the General Terms and Conditions, § 8.5.4 of the Additional Services Attachment, and §§ 6.3 and 10.13 of the Interconnection Attachment are related to Arbitration Issue No. 9 (GNAPs Petition ¶ 70).

b. Verizon

Verizon contends that GNAPs' deletion of § 7 of the General Terms and Conditions, and § 10.13 of the Interconnection Attachment would delete all of Verizon's proposed audit provisions, and eliminate either party's ability to verify the accuracy of the other's bills (Verizon Brief at 105).[43] But, Verizon notes, audit provisions are common in the industry, including in Massachusetts (Exh. VZ-3, at 7; Verizon Brief at 107). In addition, Verizon asserts, GNAPs opposition is based on a misunderstanding of Verizon's proposal (Verizon Brieft at **105).** First, Verizon notes that its proposal applies to both Parties (id. at 106). Second, Verizon points out that any audit would be performed by independent certified public accountants, and the audited party may request a protective agreement or order (id.). Finally, Verizon states its proposal is not unreasonably broad in that the audit is limited to records, documents, employees, books, facilities, and systems necessary to assess the accuracy of the audited party's bills (id.).

Verizon also points to GNAPs' history to support its audit proposal. Specifically, Verizon states that in New York. "Verizon uncovered what it believed **to** be an apparent illegal billing scheme that GNAPs implemented to overcharge Verizon millions of dollars under the guise of reciprocal compensation" (Exh. VZ-3. at 5, citing Verizon's Complaint filed in New York Teleohone Company, et. al. v. Global NAPs. Inc. et. al., No. 00 Civ. 2650 (FB) (RL) (E.D.N.Y.)). Verizon argues that it wants to avoid history repeating itself, and insists that

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43 Verizon correctly notes that GNAPs fails to include any disputed language with regard to § 6.3 of the Interconnection Attachment (Exh. VZ-3, at 8; Verizon Response ¶ 210).

having an independent third-party accountant audit GNAPs' records is preferable to initiating litigation to obtain needed information (Verizon Brief at 110).

Moreover, Verizon contends that, although GNAPs does not include any disputed language in this section, the audit provisions of § 8.5.4 of the Additional Services Attachment relating to access to OSS provides Verizon with the right to monitor its OSS so that all carriers can receive uninterrupted and reliable access to this system (Exh. VZ-3, at 9; Verizon Brief at 107). Additionally, Verizon states that its OSS contains customer proprietary network information, which Verizon is obligated to protect and to release to authorized parties only (Exh. VZ-3, at **9:** Verizon Brief at 107-108). To fulfil that obligation, Verizon asserts that it must be able to audit GNAPs' use of Verizon's database (Exh. VZ-3, at **9;** Verizon Brief at 107-108).

Finally, Verizon argues that its proposal in this proceeding is similar to that which the Department adopted in Mediaone. More precisely, Verizon notes that in MediaOne, the Department rejected MediaOne's audit proposal because it was too broad and adopted Bell Atlantic's proposal, which Verizon states is nearly identical to the audit language Verizon proposes in this case (Exh. VZ-3, at 11. citing MediaOne at 140). In fact, Verizon states that its proposed § 10.13 and § **6.3** of the Interconnection Attachment contain identical language as § 6.3.13 and § 5.7.5, respectively, of the agreement between Verizon and MediaOne's successor corporation, AT&T Broadband (id. at 12). In sum, Verizon asserts that the language and rationale adopted by the Department in MediaOne is identical or substantially similar to the language and rationale applicable in this case (id.).

3. Analysis and Findings

We find that GNAPs' concerns are without merit. For instance, Verizon's audit proposal does not contain the broad audits rights which we previously rejected in MediaOne. Rather, Verizon's proposal is specifically aimed at auditing "books, records, documents, facilities and systems for the purpose of evaluating the accuracy of the Audited Party's bills" (General Terms and Conditions § 7.1) (emphasis added). Thus, Verizon's proposal is more akin to the specific audit rights we permitted in MediaOne, at 140, as well as in Greater Media, D.T.E. 99-52, at 79 (September 24, 1999). Additionally. Verizon's proposal addresses GNAPs' confidentiality concerns in that any audit is performed by independent third party accountants who are required to execute a confidentiality agreement (see General Terms and Conditions § 7.2). Finally, Verizon's audit provisions are symmetrical, and apply to Verizon as well as GNAPs. Accordingly, we adopt Verizon's proposed audit provisions contained in § 7 General Terms and Conditions and in §§ 6.3 and 10.13 of the Interconnection Attachment.[44]

Similarly, we find Verizon's proposed § 8.5.4 of the Additional Services Attachment reasonable and appropriate. We are convinced of Verizon's need to audit its OSS to ensure reliable access to this database, and to fulfil its obligations under Federal law to protect and to release to authorized parties only proprietary information contained in its database.

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[44] Section 6 of the Interconnection Attachment addresses Traffic Measurement and Billing over Interconnection Trunks, and § 6.3 permits either party to audit all traffic to ensure that rates are appropriately applied. Section 10 of the Interconnection Attachment addresses Meet- Point Billing Arrangements, and § 10.13 grants both Parties the right to audit, subject to § 7 of the General Terms and Conditions, various components of access recording. GNAPs did not propose any changes to § 6.3, and proposed to delete § 10.13 in its entirety.

Accordingly, we adopt Verizon's proposed language for § 8.5.4 of the Additional Services Attachment.

Finally, GNAPs claims that there is no need for audit rights to verify billing, because Verizon pays GNAPs based upon Verizon's MOU count, and thus, any billing disputes between the Parties involve GNAPs disputing Verizon's MOU count. But, GNAPs did not provide any record evidence so that the Department could verify this claim. In fact, GNAPs first raised this claim in its reply brief. Accordingly, we do not accept GNAPs' claim.

In sum, we find Verizon's audit proposal is reasonable, and further find that GNAPs has failed to present convincing argument to support its modifications to the agreement.

I. Should GNAPs Be Permitted To Avoid Its Agreement To Permit Collocation In Accordance With Tariffed Terms? (Arbitration Issue No. 10)

1. Introduction

Verizon raised reciprocal collocation rights as a supplemental issue in its response. Verizon seeks the unconditional right to collocate at GNAPs's central offices, but GNAPs' proposed changes to Verizon's Interconnection Attachment §§ 2.1.5 et. seq. incorporate language that subjects Verizon's right to collocate in GNAPs central offices to GNAPs's sole discretion.

2. Positions of the Parties

a. Verizon

Verizon states that the Parties have agreed to language in the Collocation Attachment whereby GNAPs agrees to make collocation available to Verizon according to terms and conditions under GNAPs collocation tariff, if such tariff is in place (Verizon Brief at **114). If**

GNAPs does not have a collocation tariff in place, Verizon states that the Parties have agreed to negotiate the terms upon which collocation will be provided if Verizon requests collocation (id.). Verizon notes that GNAPs has expressly requested that the Department approve undisputed provisions in the agreement, which would include the Collocation Attachment (Verizon Reply at 37).

Despite the agreed upon language in the Collocation Attachment, Verizon states that GNAPs seeks to add language into § 2.1.5 of the Interconnection Attachment that would subject Verizon's right to collocate to GNAPs' discretion (Verizon Brief at 114). Verizon asserts that GNAPs should not be permitted to undo that which it has already agreed to in one section by adding language to another section, and thus urges the Department to reject GNAPs' attempt to revise § 2.1.5 of the Interconnection Attachment (Verizon Brief at 114; Verizon Reply at 37). Moreover, Verizon dismisses, as lacking merit, GNAPs' argument that the agreement somehow discriminates between customers (Verizon Reply at 37). Verizon also argues that because GNAPs did not identify its proposed language for § 2.1.5 of the Interconnection Attachment as related to any of the issues in its complaint, the Department should not now address that language (Verizon Brief at 115).

Even if GNAPs had not agreed to permit collocation, Verizon contends that it should be permitted to do so (id.). Verizon argues that whether GNAPs is required by law to provide collocation is not the issue, noting that nothing in the Act prohibits the Department from allowing Verizon to collocate (Verizon Reply at 37; Verizon Brief at 115). Verizon further states that, because GNAPs determines all of the interconnection points under GNAPs'

proposal, GNAPs could unreasonably limit the terms and conditions for Verizon's interconnection with GNAPs (id.). Thus, the Department should either permit Verizon to collocate, or prohibit GNAPs from charging distance sensitive transport rates (id).

Furthermore, Verizon argues that without the option to collocate, it cannot evaluate whether it is more cost effective to purchase transport from GNAPs or build its own facilities to GNAPs (Verizon Brief at 115). Verizon notes that several state commissions have ruled in its favor on this issue, and that fairness dictates that it have comparable choices to those of GNAPs (id. at 115-116). Verizon states that its proposal gives Verizon reasonable interconnection choices while GNAPs' proposal does not, and, therefore, the Department should adopt Verizon's proposed language in § 2.1.5 of the Interconnection Attachment (id. at 116).

b. GNAPs

GNAFs asserts that there is no state requirement for GNAPs to provide collocation but that it is company policy to do so for the convenience and benefit of its customers (GNAPs Brief at 66). GNAPs notes that it has never rejected a request by Verizon to collocate at GNAPs' facilities, nor has Verizon ever asked to collocate (id.). GNAPs insists that it welcomes customers, including Verizon, but that it cannot allow a customer to dictate terms and conditions that purport to involve GNAPs in discrimination between its customers (id.). GNAFs also indicates that it may not be able to match all terms and conditions requested and required by Verizon, and that GNAPs provides collocation through a corporate entity not a party to this proceeding (id.). In addition, GNAPs contends that there is no Federal requirement for GNAPs to provide collocation and urges the Department not to impose a state requirement that could

potentially place GNAPs in the position of discriminating between customers (id. at 67).

3. Analysis and Findings

First, we do not attempt to determine whether GNAPs agreed during voluntary negotiations to grant Verizon an unconditional right to collocate at GNAPs' facilities. Nor do we need to. Consistent with the Wireline Competition Bureau. we agree that "there is simply no requirement that a petitioner for arbitration under section 252(b) must present the Arbitrator with the same language discussed during previous voluntary negotiations." Virginia Order at ¶ 57. Thus, we find Verizon's claims regarding GNAPs' attempts to "undo" that which GNAPs agreed to in the Collocation Attachment unconvincing. Our focus here is the disputed language in § 2.1.5 of the Interconnection Agreement, which subjects Verizon's right to collocate to GNAPs' discretion.

The Department has previously dealt with reciprocal collocation rights. Specifically, in MediaOne, at 50, we acknowledged that nothing in the Act specifically requires a CLEC to permit an ILEC to collocate at the CLECs' facilities. But, we also concluded that the Department may require, under state law, a CLEC to do so. MediaOne at 50. The Department, however, declined to impose collocation obligations on CLECs because we determined that such a requirement would conflict with a CLEC's right to interconnect at any technically feasible location it chooses. Id. This decision was upheld on reconsideration where we explained that "if BellAtlantic chose to collocate at MediaOne's facilities, MediaOne would be forced to accept that type of interconnection in lieu of, for example, a mid-span meet

arrangement. Bell Atlantic's choice would limit MediaOne's options." MediaOne Reconsideration Order at 22. In the case at hand, if the Department were to grant Verizon's request for reciprocal collocation rights, we would be overturning our prior decisions on this issue. But, Verizon has not presented persuasive argument that would convince us to disturb our earlier decisions. The potential limitations imposed on a CLEC's interconnection options, if an ILEC decided to collocate at the CLEC facilities, remain our primary concern.

Likewise, Verizon's insistence that fairness dictates it have comparable interconnection choices as GNAPs rings hollow. The interconnection standards outlined in the Act for ILECs and CLECs are not symmetrical. Rather, the burdens imposed by the Act fall much more heavily on ILECs. Thus, appeals based upon fairness are not convincing. Accordingly, we reject Verizon's proposed language for § 2.1.5 of the Interconnection Agreement, and adopt GNAPs' proposed language. We find that GNAPs' discretionary grant of collocation rights to Verizon is consistent with our prior policy and with the Act. We further find no Federal or Department precedent for Verizon's alternative request that we prohibit GNAPs from charging distance sensitive rates, and we reject it accordingly.

J. Should GNAPs Be Permitted to Avoid the Effectiveness of Any Unstayed Leeislative, Judicial, Regulatory or Other Governmental Decision, Order, Determination or Action? (Arbitration Issue No. **11)**

1. Introduction

GNAPs seeks a provision in the interconnection agreement at General Terms and Conditions § 4.7 that would require Verizon to delay the effect of a change in law until such law is "final and non-appealable." regardless of whether the change in law is subject to a

judicial or regulatory stay. Verizon proposes to give effect to all changes in law.

2. Positions of the Parties

a. GNAPs

GNAPs claims that, "no party should be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decision, order, determination **or** action" (GNAPs Reply Brief at 28). GNAPs further submits that both Parties should follow the law (GNAPs Brief at 67; GNAPs Reply Brief at 28).

b. Verizon

Verizon states that its proposed General Terms and Conditions § **4.7,** a subsection of "Applicable Law," ensures that the contract reflects changes in law (Verizon Brief at 117). Verizon **argues** that GNAPs' proposal to delay implementation of a change in law until appeals are exhausted, even if the change in law is not subject to a stay, is "patently unreasonable" and "unfounded" (Verizon Brief at 117: Verizon Reply Brief at 38). According to Verizon, GNAPs' true motive is to "base Verizon MA's obligations on what GNAPs wants governing law to be, not what it actually is" (Verizon Reply Brief at 38) (emphasis in original). Verizon states that the Parties' agreement must recognize a change in law if the law is effective (Verizon Brief at 117; Verizon Reply Brief at 38).

Verizon further contends that GNAPs' proposed contract language that addresses discontinuance of service, payment, or benefit, specifying that it must be "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier" (see GNAPs' General Terms and Conditions § 4.7) is "superfluous and, thus,

undesirable from a contract drafting standpoint" (Verizon Brief at 117). According to Verizon, it is "critical to Verizon that it have the right to cease providing a service or benefit if it is no longer required to [do] so under applicable law" (Verizon Brief at 118, footnote omitted: Verizon Reply Brief at 38). Verizon therefore asks the Department to adopt Verizon's proposed General Terms and Conditions § 4.7.

3. Analysis and Findings

GNAPs proposes two additions to General Terms and Conditions § **4.7** that the Department deems inappropriate. First, GNAPs' proposes to add the phrase "final and non-appealable" in reference to "any legislative, judicial, regulatory or other governmental decision, order, determination or action." The Department finds that this language, if adopted, would have the undesirable effect of staying the effectiveness of any change in law pertinent to the contract regardless of whether a judicial stay is ever requested or granted. Second, GNAPs proposes language that addresses discontinuance of service, payment, or benefit, specifying that it must be "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier." The Department finds that **the** interconnection agreement already specifies the terms and conditions under which Verizon may discontinue service, including the timing and other procedures relating to discontinuance, and thus, GNAPs' proposed language is unnecessary. Accordingly, Verizon's proposed language for General Terms and Conditions § 4.7 is adopted.

K. Should GNAPs be Permitted *to* Insert Itself Into Verizon's Network Management to Prospectively Gain Access to Network Elements That Have Not Yet Been Ordered Unbundled? (Arbitration Issue No. 12)

1. Introduction

This issue relates to General Terms and Conditions § 42 (Technology Upgrades), which discusses network upgrades and the responsibilities of interconnecting carriers. The disputed contract language relates to the consequences of such upgrades.

2. Positions of the Parties

a. GNAPs

In response to a Department question, counsel for GNAPs stated during the hearing that "[o]bviously the characterization of the issue pretty much lays out what a potential response would be anyway" (Tr. at 195).[45] In its brief, GNAPs offers no position on the issue because "Verizon framed the issue in such an argumentative and vague manner that Global cannot be expected to reply" (GNAPs Brief at 67). In its reply brief, GNAPs responds to this issue by stating that "Global wants some protections that as a customer it will (a) have access to the same technologies deployed in Verizon's network and (b) Verizon will not deploy new technologies which will affect Global's service quality without notice and adequate joint testing" (GNAPs Reply Brief at 28).

b. Verizon

Verizon argues that its proposed language in General Terms and Conditions § 42 (Technology Upgrades) is "necessary to memorialize Verizon's right to upgrade and maintain its

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[45] In its Reply, Verizon framed Arbitration Issue No. 12 as follows: "Should GNAPs be Permitted to Insert Itself Into Verizon's Network Management or to Contractually Eviscerate the 'Necessary and Impair' Analysis to Prospectively Gain Access to Network Elements That Have Not Yet Been Ordered Unbundled?" (Verizon Response at 112).

network, ensure that GNAPs does not force Verizon to unbundle its network absent a requirement to do so, and make GNAPs financially responsible for interconnecting with Verizon's network'' (Verizon Brief at 119). According to Verizon, the dispute on this issue relates to the consequences of technology upgrades, not whether Verizon has a right to upgrade its network (id.).

Verizon states that applicable law only requires Verizon to "provide GNAPs unbundled access to network elements that have been declared UNEs and that pass the necessary and impair test" (Verizon Brief at 119) (footnote omitted). Accordingly, Verizon claims that the language GNAPs adds requiring Verizon to offer fiber and "next generation technology" as unbundled network elements is unnecessary (id.). On the issue of financial responsibility, Verizon states that, "if GNAPs wishes to interconnect with or take services or facilities from Verizon, then GNAPs must ensure that its network is compatible with Verizon's network as it may change from time to time" (id. at 120). Verizon claims that this requirement is necessary to ensure that Verizon maintains its service quality standards and acts in a non-discriminatory manner (id.).

Verizon states that these issues were examined in the Department's Tariff No. 17 Order, and that § 42 of the General Terms and Conditions of its Redlined Agreement is consistent with the Department's prior rulings (Verizon Brief at 121). Verizon further states that its proposed § 28 of the General Terms and Conditions (Notice of Network Changes) of its Redlined Agreement "tracks the Department's findings and should be adopted in its entirety" (id.).

3. Analysis and Findings

In the Tariff No. 17 Order, at 147, the Department held that an ILEC's duty under Section 251(c)(5) of the Act "requires Bell Atlantic [now Verizon] to provide notice of its planned network changes and upgrades." Although the Department entrusted "Bell Atlantic [now Verizon] with the authority to make all final decisions with regard to its planned network changes and upgrades." the Department ordered Verizon "to provide a mechanism for CLECs to submit formal comments and suggestions as to proposed network changes and upgrades." Id. at 148. Therefore, Department precedent requires Verizon to provide GNAPs with notice of any network changes. We agree with Verizon that its proposed § 28 of the General Terms and Conditions is consistent with Department precedent and therefore adopt it.

As to the cost to GNAPs to accommodate Verizon's network changes in its own network, the Department found it unnecessary to "require Bell Atlantic to reimburse CLECs for costs associated with network changes and upgrades." Tariff No. 17 Order at 149. The Department affirms its prior determination. The Department finds no basis to shift responsibility for CLECs' costs associated with Verizon's network changes and upgrades; therefore, we reject GNAPs' proposal to do so.

Next, we find GNAPs' attempt to address Verizon's obligation to provide unbundled access to network elements, including next generation technology, goes beyond the requirements imposed by the Act. Verizon is not required to provide unbundled access to any and all network elements, but only to those elements that have been declared UNEs because they have

passed the "necessary and impair" test.[46] Until next generation technology, a term which is not even defined by GNAPs, has been declared a UNE, Verizon is not required to provide unbundled access to it. Accordingly, the Department finds Verizon's proposed contract language for General Terms and Conditions § 42 consistent with Department and FCC precedent, and hereby adopt it.

V. ORDER

After due consideration, it is

ORDERED: That the issues under consideration in this Order be determined as set forth in this Order: and it is

FURTHER ORDERED: That the Parties incorporate these determinations into a final

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[46] See Iowa Utilities Board v. FCC. 219 F.3d 744 (8th Circuit 2000).

agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) of the Act, within **21** days of the date herein.

By Order of the Department,

/s/
Paul B. Vasington, Chairman

James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Deirdre K. Manning, Commissioner